

## **REMARKS**

Responding to the Official Action in the above-identified application dated March 23, 2005, the Applicant has submitted some further amended independent claims and a few claims dependent on one of them. All but claims 5, 8, 15 and 16 had been finally rejected as amended. Promise of allowance of claims 5, 8, 15 and 16 is appreciated. It is presumed the Examiner will formally allow claims 25, 26, 27 and 28 the independent claims suggested by the Examiner in which were limitations of cancelled claims combined with claim 1.

The claims as earlier amended and particularly claims 1-5, were discussed with the Examiner during the telephone interview. However, despite amendments made to the broader claims in an effort to overcome objections that had earlier been raised by the Examiner, the Examiner deemed all further amended claims insufficient distinguishing to overcome final rejection based on the four cited prior art patents during the Interview the Examiner kindly granted by telephone on May 3, 2005. Those uncanceled claims as previously amended may be appealed, if the applicant deems that necessary. Both the applicant and her attorney were involved in the interview. The Examiner has reported the Interview in his communication dated May 9, 2005, a copy of which was sent to the undersigned attorney and forwarded to the applicant Diane Saccomandi.

The Interview as reported, was accurate. Since it was telephonic, and nothing further in writing was exchanged in preparation for the conference or thereafter until now in response to issues raised, but much discussion ensued about the differences of the amended claimed claims from the prior art, which differences both parties seemed to understand. The Examiner said he could not credit differences because in his view they were not structural and more structure needed to be claimed for allowance in his opinion. The Examiner seemed to agree that if the claims included a table, affirmatively, it might make a difference as to the allowability of the claims as they stood or as they might be amended. New independent claim 33 is such a combination, which from our discussion posing such a claim as hypothetical, the Examiner seemed to agree would be allowable. Its allowance is respectfully requested.

The attorney for the applicant suggested that he had thought that he remembered a case or two in which claims of this sort had been held patentable, but after having the matter researched for a limited time, no pertinent authority was discovered directly on point, and,

since time was short, the attorney for the applicant has given up that approach in trying to persuade the Examiner on the authority of decisions for the present. Instead the arguments for allowance have been expanded. In addition, new independent claim 29 repeating already claimed claim language, and adding some additional limitations is presented herein in an effort to further distinguish over prior art have with a few claims 30, 31 and 32 dependent on claim 29, also included.

The attorney and inventor are most appreciative of the Examiner's kindness in taking time to listen to the applicant's position and then to clarify and amplify his position.

The gist of the argument presented at the Interview is that the claims as amended and considered in the final rejection should be allowed or be ready for appeal. Those claims were amended to effectively remove any suggestion that the table was expressly claimed or inferentially claimed, but the Examiner seemed to suggest that claim should be made allowable by including the table as an element, as has been done now in new claim 33. Alternatively it would seem by putting dimensional limitations on the claims they might be allowable, but such claims would then be so narrowed as to be easily avoided by a would-be infringer by eliminating the table as an element from the decorative table covering sold. Nevertheless, if applicant issues a patent with claims 25, 26, 27 and 28 she might just as likely use claim 33 for whatever limited value it has.

The reference to a table top in the claims previously amended is used only as a basis for measuring a table covering. Such covering can be made and purchased in various shapes and sizes and to be useful for its decorative purpose has to be referenced to a hypothetical tabletop size. Its use as a decorative covering for making more attractive a display for the table is dependent on relative size of a table. If the dimensions were described in terms of the calibrations on a ruler or tape measure, no one would argue that the ruler or tape measure had been inferentially included, even though, in order to confirm infringement, it might make sense to bring out a ruler or tape measure or some other means of confirming the claimed size. The reference to a generalized, hypothetically table top size and shape is effectively a means of measuring the table covering and its combination of parts or elements. As such, it should be permitted with the understanding that the table covering in order to be effective and function as the decorative device must be bought on the basis of actual use on a particular table corresponding to a general shape and within a relatively narrow range of sizes. The

purchaser, whether a designer or a direct user of the table covering has to have dimensions in mind and make a decision as to whether that table covering is suitable for use for a particular table. Nevertheless, the mention of a measuring device for selected size is by no means a precise measurement. Rather it is a measurement in generality of a range of sizes that must be selected by a given user for a table covering with its loop extensions of a certain size or shape to create a desired effect. Even the shape of a covering need not be exactly that of a particular table somewhere but approximately the table shape. But approximating the shape permits in some way subjective decisions by the purchaser whether or not variations may be compensated for. For example, by having ranges of sizes of the cover and loop extensions may provide sufficient ranges to enable the potential buyer to apply his knowledge of exact size and shape of a particular table determine whether the coverings would function for the decorative effect intended, subject to placing it down on its actual decorative effect on the table. "Sash," which is probably a more appropriate term for "tie," is not intended to pull the loop extensions tightly against the bottom of the table top or any other structure, although in some decorative applications pulling the loop extensions slightly inwardly under the table top may be used for a decorative effect. In short, the tie is a decorative sash intended to be colorful or interesting or eye-catching and is intended to be draped in the wide spaces between the loop extensions for the desired visual effect. Further, the tie is no functional drawstring, but is selected to give the desired decorative appearance by exposing the tie as a sash, for otherwise decorative in itself. The tie need not be, but may be, a single piece with a single bow or other connector decoratively joining its end. Alternatively the tie may be multiple pieces connected together in multiple places by bows or other connectors is not limited to a particular length other than sufficient length to reach around the table top. As long as the composite length permits permitting desired decorative connections and draping.

We believe the Examiner clearly understands the applicant's decorative purpose and other distinctions, so that the issue seems to be that despite the fact that the decorative tie would never be used in the same fashion as the references, the possibility of it being pulled snugly under the tabletop theoretically exists. The applicant believes that such a theoretical and impractical possibility of drawing the tie tightly to pull the cover under the table top should not be considered. Likewise, the applicant's table covering is one that was never intended to be thrown away after one use using the drawstring to form a bag, probably for the

paper plates and throw away glasses, utensils and packages, as most of the references provide. Even the single reference for a seat cover provides a tie to tautly hold the cover in place. Without showing decorative use and with no suggestion of the tie being decorative, it is clearly not proper anticipation of applicant's decorative inventive combination of elements. Despite the fact that no decorative combination as shown in the drawings and description in the specification has been found by the Examiner, he is unable to find the references distinguishable over the applicant's invention under the rules. The applicant's position is that even though the rules should not be applied in this way, there are enough clearly definable difference in the claims to distinguish structurally over every reference. In addition, the drawings, and the specification make clear that this is an entirely different kind of invention for an entirely different purpose from the reference solely or in any combination. The applicant made her invention for its appearance and decorative effect, rather the utilization purpose and effect of references. Most references show a table cloth held tightly on a picnic table top by a drawstring drawn taut so that it will not blow away in the wind. Then for their more mundane purpose, use of the cheapest materials is selected for table coverings which is consistent with their purpose, they end up as trashbags using the same non-decorative drawstrings to close them. Even the seat covering which secondarily might be possibly made of fabric selected to be attractive, its shape and structural elements are not designed for beauty but are functionally used for its purpose of pulling the cover tightly into the seat to provide a decorative cover. True to its primarily utilitarian purpose of holding the seat cover on a seat is for protection against wear and staining. Certainly there is no decorative or sash-like effect or any non-utilitarian or decorative function shown or suggested to the drawstring tie. In fact, the applicant's device and declared purpose in her application could not be further removed from the functional nature of all four references. Drawstrings shown in the seat cover are indeed just that, very functional strings or small rope ties connected by some functional device means and preferably not to be seen at all.

All of the claims as amended before final rejection are distinguishable over the references. The utilitarian picnic table covers of Rodebaugh, Schwaab, and Bonnett, all provide a string or tie, usually retained in the equivalent of a hem of the cloth and none of which provide loop extensions as defined by the applicant's claims which extend from the periphery of fabric cover smaller than the size of the table, at least to the edge of the table.

The loop extensions are specifically defined as extending periodically from the periphery of the fabric cover to the edge of the table top and in most cases extend over the edge. In either position the loops are provided out or beyond the edge to allow a decorative tie which might have been better termed the “sash” to be fed through the loops around the table top in a decorative way in which adjacent ends of ties may be connected together in a decorative way between adjacent loop extensions. Most of the references do their best to hide the utilitarian tie, except as necessary, to bring it out from the hem to engage the table. Bonnett provides a raised border and hence must be made closer to the size of the table so in order to function to cover the table. Even though the raised area provides a damn to keep spills from going beyond the table cloth when cups and the like are within the borders. Within the raised peripheral areas is a cynch strap 3 which has a gap in the raised border or hem permitting the cynch strap to draw together the raised edge to form a bag as shown in Fig. 8. These table cover/bag patents are useful for picnics and disposable table coverings or cloths where it is desirable to take the cover right to the edge to cover or protect the entire table instead of less than the entire table for applicant’s decorative effect. The easier solution of providing a utilitarian tie and a hem serves a utilitarian purpose of holding it to the table in some cases, and in all cases is intended to use the table cloth as a disposable bag for trash. These practical picnic table cloths are useful but they have nothing whatever to do with decoration and they are shaped differently in accordance with the claims.

The seat cover of Nelson is equally utilitarian, but is wrapping something different from a table top, namely a car seat. The cover is made to conform to the seat of course, but is pulled in place by separate ties in the back as shown in Figs. 1 and 5. The seat back is shown in Fig. 1. Apparently the back of the seat is not considered important by the patentee. The principal focus is to keep the front of the fabric seat from being stained or torn or too quickly worn out. Two side sleeves are provided for the purpose of drawing the seat cover tightly against the seat back, but there is nothing decorative about them or about the utilitarian tie 5 which pulls the seat back tightly in place. Similar ties are used below the surface of the seat 3 in addition to those in the back 2. To add to the tautness and to emphasize its functionality in that way, elastic seat ties are preferred to add to pulling the covers tautly into their respective parts. The totally different appearance and utilitarian use of the seat covers is evident in Figs. 1 and 2 as well as an alternate form in Figs. 3 and 4.

Bearing the references in mind, please re-consider claim 1 which as claimed is directed to a decorative table covering.

The center piece of the decorative covering is a fabric cover which corresponds to the shape of a selected shape of table, but is smaller than the top of such a table. When placed on such a table, it will expose parts of the table top and or any covering thereon beyond the peripheral edges of the fabric cover. Part of the decorative effect is providing loop extensions extending from the periphery of the fabric cover periodically to the edge of the tabletop, and in some cases beyond. These loops to extend at least to the edge of the tabletop, however, and provide the means of holding the ties spaced from the fabric cover. These loop support at least one decorative tie fed through the loops and around the tabletop in a decorative way. There may be just one or there may be many pieces to the tie. However arranged, adjacent ends of the tie segments may be connected together in a decorative way between adjacent loop extensions. The decorative tie is selected for its contrast with the table and contrast may be in color, texture or material used. None of the references show the combination of a structure of this decorative table covering. Certainly no reference cited is decorative in the same way as the applicant's decorative covering. The decorative table covering is not used to pull the decorative covering tightly into the table. In fact, such utilitarian use of the tie would defeat its decorative effect. The tie, instead, is intended to give a festooning or other purely decorative effect like bunting or draping around the table. The table can in itself be treated and attractive decorative ways and can add decorative features such as bows or connectors at various times.

Claim 2 is distinguishable from the prior art for all of the reasons given in connection with claim 1. This is true of all of the original claims, please let it be understood. Claim 2 makes clear that the table covering described in claim 1 is intended to be placed in the middle of the tabletop and is of such shape and size that it does not extend to the edges of the table except to the extent that the loop portions so extend. None of the references suggest such a combination of parts and arrangements.

Claim 3 also depends from claim 1 and provides that at least a part of the fabric cover is perforated in a decorative design to expose the tabletop or a cover thereon beneath the fabric cover. Of course, none of the references shows a perforated cover of any sort that is completely different from the references. The references are probably not perforated because

of the practical use to which they are put, whereas perforations are another indication of structure physically different from the structure of the references for an entirely decorative purpose.

Claim 4 depends from claim 3 and provides that at least one perforated area of the decorative table covering has perforations covering another contrasting fabric beneath. Again, such a concept and structure is totally missing from the references. Structurally it is an entirely different kind of arrangement not shown by the references, not even suggested in any way by those totally functional structures.

The Examiner has agreed that claim 5, if rewritten as an independent claim, with all of the limitations of claims 1, 3, 4 and 5 included is allowable. New claim 25 has been so rewritten and is substituted for cancelled claim 5. Its allowance is requested as the Examiner indicated.

Claim 6 is a claim dependent from claim 1 in which the fabric cover is non-woven. This could include decorative treatment such as leather, decorative non-woven fabrics, and fabrics constructed in the unique way. It is true that the reference table cloths are probably of non-woven material, but using non-woven material in a decorative way is not disclosed in any of them and, of course, neither are the limitations in claim 1 as mentioned above.

Claim 7 is dependent from claim 1 and distinguishable for all of the reasons relating to claim 1. Claim 7 provides that the ends of decorative ties designed to extend through the loops on the loop extensions are pulled together and the ends of the decorative ties tied to each other in a decorative matter. This could be by bows or other decorations using the ties themselves or it could be by means of pins in a decorative form or any other connector in decorative form.

Claim 8 is another claim which the Examiner said would be allowable if rewritten in independent form. Claim 26 is in that form and substituted for the cancelled claim 8. Its allowance is requested.

Original claim 9 is dependent from claim 1 and should be allowable for all of the reasons that claim 1 is. It additionally provides that the ties are made of material of different fabric from the fabric cover. This claim suggests that the different fabric of the fabric cover would be in contrast, perhaps different from color, texture or material to enhance the decorative purpose and has not been suggested by the prior art.

Claim 10 specifically names a different color for the ties from the fabric as being a direct decorative addition to claim 1. No such combination has been suggested by references. The claim contains are limitation of claim 1 and is also allowable for all the reasons claim 1 is.

Claim 11 is dependent from claim 1 and provides that the loop extensions are separate pieces from the fabric cover and attached to the fabric cover. This inferentially would include separate pieces of different material and other variations in the appearance for various special purposes. Claim 11 is still dependent for the many good reasons specified in connection with claim 1.

Claim 12 is dependent on claim 11 and adds that each loop is formed by folding back the loop extension on itself connecting one end of each extension near the other end and connecting the loop extension as a whole to the fabric cover. This claim adds to the individual treatment of the loop extension in specific decorative way in which the extension could be formed which is not specifically suggested by any of the references, particularly when, as it must be, it is combined with all of the distinguishing limitations of claim 1.

Claim 13 is dependent on claim 12 and describes an even more specific form of the loop extension whereby the folded back end of the loop is placed on top only part way to the periphery of the fabric cover and the two ends of the extension are decoratively connected together in that position. This is obviously a decorative situation where none of the references would involve such a structure and the arrangement provides the double function of connecting the extension into a loop and using a fastener separate from the loop to connect the pieces connected together to form the loop.

Claim 14 is also dependent on claim 11 and is focused on decorative loops in which the loop is formed by rolling one end of the extension into a loop and connecting the contacting parts of the loop together and the opposite ends of the extension to the fabric cover. No such structure is shown in the prior art.

Claims 15 and 16 have been cancelled because, pursuant to the Examiner's indication, that these claims would be allowed if placed in independent form. They have been put into such independent form as new claims 27 and 28. With the modification to independent form, these two new claims should be allowed.

Claim 19 is dependent on claim 1 and includes all of its distinguishing limitations in



claim 1. It further makes specific that the cover corresponds in shape to the tabletop on which it is intended to be used but is smaller in size than the tabletop. Claim 19 is slightly more specific than claim 1 and clearly in itself quite different from the table coverings of any of the references.

Claim 20 is dependent on claim 19 to which it adds a fabric cover which is intended to be used on circular table top in which the fabric cover is circular but is smaller in diameter than such a table top.

Claim 21 is also dependent on claim 19 but the shape of the tabletop on which the decorative covering is to be used is generally rectangular and the fabric cover is generally rectangular but smaller. Neither of the more specific claims 20 and 21 has any counterpart in the prior art where the table covers are all shown to be the size of the tabletop. They are clearly distinguishable over these references and should be allowed.

Claim 22 is square, and therefore a species of rectangular, but is sufficiently important in decorating to be separately claimed. Patentability is for the same reasons as claim 21, as well as 19 and 20 and should be allowed.

Claim 23 is dependent on claim 1 and provides that the loop extensions will extend to and beyond such tabletop so that size of the tie when installed through the loop extension, extensions will lie outside and fall below the tabletop and so as to tend to hold the decorative table covering in place on the table. These limitations describe a specific form of decorative covering which is not shown in the prior art and the claims should be allowed over the prior art.

Claim 24 adds to claim 23 that loop extensions are designed to extend below the tabletop sufficiently far that the ties when installed may be pulled sufficiently tight to pull at least some part of the tie is under the tabletop. The purpose of this partial pull by the ties is obviously to achieve a different decorative effect. It is not the taut condition of the drawstrings in the references which function for decorative purpose whatsoever, but are purely intended to tightly engage the structure into which they are being attached and pull it snugly around that structure. The difference is apparent and allowance of the claim is respectfully requested.

As previously mentioned, claims 25, 26, 27 and 28 have already been indicated by the Examiner to be allowable if placed in the dependent form of the new claims. Their allowance

is respectfully requested.

Claim 29 is an independent claim, essentially like claim 1, but having additional references that enhance the decorative nature of the table. In particular, the loop extensions on the fabric cover periodically extending from the periphery of the fabric cover to the edge of the tabletop having a minimal spacing between the lateral edges on the order of at least half the width of the loops or more at the table edges. This provides that the loop extensions as shown are well spaced from corners in order to avoid a crowding effect. At the same time, the spacing to the corners does practically have to be as much as the spacing between the decorative ties. This is because the spacing between the decorative ties to permit a tie or sash to be festooned is automatically preserved when extending around a table corner as seen in Fig. 1. It also provides that the length of the loop extensions is sufficient to allow them to extend below the tabletop. Sufficiently the loops provide sole support for the decorative element without contacting any support structure beneath the table. Unlike the drawstrings of the cited prior art, picnic table covers. Claim 29 should be entered and allowed over the prior art.

Three claims dependent from claim 29 add additional decorative differences. Claim 30 provides that the decorative tie contrasts with the fabric of the table cover in form, color or texture. Claim 31 adds to claim 29 that the cumulative length of all segments of the tie when connected together exceeds the length of the periphery of the tabletop whereby draping the decorative tie between loops is permitted and tautness of the tie is avoided. Entry of claims 29-31 for purpose of allowance or appeal is respectfully requested.

Claim 32 adds to claim 30, further distinguishing in which the general shape of the fabric cover is limited to rectangular to correspond to the desired table shape and has loop extensions extending away from the corners near the fabric cover of at least about half the distance between adjacent loop extensions or more. There is also provided for sufficient lateral spacing between adjacent loops to facilitate display of the decorative tie between legs to others for draping as desired and a limit of the spacing of the loop extensions from corners. Each of the additional features as well as the features of claim 29 enumerated are not embodied in any of the references cited. It is respectfully requested that claim 32 be entered for purpose of allowance or appeal.

Claim 33 has been added to claim a combination which includes the table of claim 1

and a table structure itself which the attorney for the applicant understands Examiner agreed that he would be willing to allow it so that entry of this claim is respectfully requested for allowance, or alternatively for appeal.

In addition to the literal specific differences in structure pointed out above in connection with the various claims, there is an overriding aspect to the invention that the Examiner seems to feel cannot be counted, namely the decorative nature of the table covering claims. The decorative nature of the invention should under no circumstances preclude patentability. If the structure were identical, for example, to one of the table coverings and used non-decorative material having a drawstring fed through the hem along the edges of the table cloth to draw the cloth under the table tautly, to hold it in place against winds or the like, such rejection would be understandable. However, other reasons to reject while commonly encountered in some variation within the Patent Office have no validity or should have no validity. In addition to providing a very unique decorative arrangement not only different from the references, but from any commercial structure, the applicant or the attorney for the applicant have ever seen, it has a specific different structure to the elements of the combination yielding an entirely different combination from any known structure in the prior art. Such a variation is not only unique, attractive, and important to the inventor to protect her invention against the flood of foreign fabrics and goods, such as table cloths that have come into this country from abroad. It seems particularly unreasonable to prevent a true inventor with what may well be a very saleable invention from getting the protection that will enable her in a practical sense to go to market. The attorney for the applicant appreciates the quandary that the Examiner finds himself in when asked to allow the claims in this application. Over the years traditional reasons for rejecting new types of claims have gradually given way to the better consensus that such an inventor like any other inventor in more conventional fields should have his or her chance at patent protection. If it is true that the subject matter for patentability is not limited, that there is no structure which should be categorized as unpatentable under the sun, some of the traditional technicalities preventing patentability should be reexamined. This application is one such case. Reconsideration of the claims rejected and entry of the new claims for purpose of allowance is respectfully requested.

Please enter the new claims 28-33 for purpose of allowance or appeal and reconsider

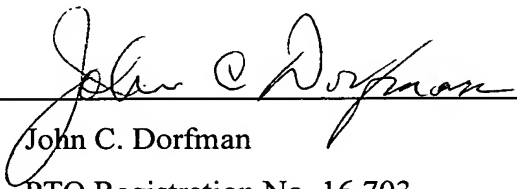
the other claims in the presented amended form in the amendment filed February 28, 2005, and finally rejected by the Examiner in the final rejection of March 23, 2005. If not allowed, please enter them for purpose of appeal.

Respectfully submitted,

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